Forest City Management, Inc. *and* International Brotherhood of Electrical Workers, Local 1377, AFL–CIO. Case 8–CA–26980

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

Pursuant to a charge filed by the International Brotherhood of Electrical Workers, Local 1377, AFL–CIO, the Union, on December 9, 1994, the General Counsel of the National Labor Relations Board issued a complaint on January 23, 1995, alleging that Forest City Management, Inc., the Respondent, has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 8–RC–15110. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On April 3, 1995, the General Counsel filed a Motion for Summary Judgment. On April 5, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 19, 1995, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response to the Notice to Show Cause, the Respondent admits its refusal to bargain, but attacks the validity of the Union's certification based on the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.[1] We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Ohio corporation with an office and place of business in Cleveland, Ohio, has been engaged in the management of commercial real estate including an office and retail facility known as Tower City Center, 50 Public Square, Cleveland, Ohio. Annually, the Respondent, in conducting its business operations derives gross revenues in excess of $100,000, of which in excess of $25,000 is derived from enterprises which operate within Tower City Center and whose operations meet a current standard of the Board for asserting jurisdiction, other than the indirect inflow or the indirect outflow standard.[2]

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held October 21, 1994, the Union was certified on November 1, 1994, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time maintenance employees, including the locksmith employed by the Respondent in the M. K. Ferguson Department, Tower City Center, 50 Public Square, Cleveland, Ohio, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act and all other employees.

[1] We reject the Respondent's assertion that the Board's inclusion of the locksmith in the maintenance-employee unit is contrary to the Board's decision in *Ore-Ida Foods*, 313 NLRB 1016 (1994), and that this constitutes a special circumstance warranting reconsideration. Respondent's contention that the locksmith should be excluded from the maintenance-employee unit was fully considered in the underlying representation proceeding. Further, *Ore-Ida Foods*, which issued prior to the Board's order denying the Respondent's request for review of the Regional Director's decision, is clearly distinguishable as it involved the issue of whether a combined production and maintenance unit was the only appropriate unit, rather than whether a locksmith should be included in a maintenance unit.

[2] Although the Respondent denied certain of the jurisdictional allegations in the complaint, it thereafter entered into a stipulation in which it stipulated to the foregoing jurisdictional facts, admitted that its Tower City Center operations are within the jurisdiction of the Board, and agreed that the stipulation would be included as an exhibit to the General Counsel's Motion for Summary Judgment in this proceeding.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

About November 15, 1994, the Union, by letter, requested the Respondent to bargain, and, since about November 25, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after November 25, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Forest City Management, Inc., Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with the International Brotherhood of Electrical Workers, Local 1377, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time maintenance employees, including the locksmith employed by the Respondent in the M. K. Ferguson Department, Tower City Center, 50 Public Square, Cleveland, Ohio, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act and all other employees.

(b) Post at its facility in Cleveland, Ohio, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 8 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 28, 1995

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the International Brotherhood of Electrical Workers, Local 1377, AFL–CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time maintenance employees, including the locksmith employed by us in the M. K. Ferguson Department, Tower City Center, 50 Public Square, Cleveland, Ohio, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act and all other employees.

FOREST CITY MANAGEMENT, INC.